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82-51

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

GORDON B. LEITCH, JR., AND MARY C. LEITCH,

PETITIONERS

V.

COMMISSIONER OF INTERNAL REVENUE

RESPONDENT

---

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

---

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Petitioners Pro Se

## QUESTIONS PRESENTED FOR REVIEW

Petitioners Gordon B. Leitch, Jr., and Mary C. Leitch, sovereign citizens, present the following questions for review in the spirit of a good faith, scholarly analysis of legal monetary history, and not anything in the nature of protest, bad faith, or wantonness:

1. When the United States Constitution obligates the federal government, by specific constitutional provision, to the same gold and silver coin tender to which the States are limited, is the use of irredeemable paper notes, then, not an abrogation and disparagement of these coinage and monetary rights secured by the Constitution?

2. Do not the apparently adverse decisions of this Court in Knox v. Lee, Parker v. Davis (The Legal Tender Cases), 79 U.S. (12 Wall.) 457, 20 L. Ed. 287

(1870), and Julliard v. Greenman, 110 U.S. 421, 4 S. Ct. 122, 28 L. Ed. 204 (1884), rest upon legal, mathematical, and historical error, as new evidence and proof demonstrates?

3. Do not the decisions of this Court prohibit the use of that which has no intrinsic value (e.g. paper notes) as money?

4. May the Commissioner neglect statute and use something which is not the standard unit of value in making his determinations?

5. May historical fact be denied in arriving at a proper decision?

6. May the Tax Court grant a summary judgment against petitioners where questions of fact exist, and award damages for the purposes of denying constitutional rights?

# LIST OF PARTIES

GORDON B. LEITCH, JR.

MARY C. LEITCH

COMMISSIONER OF INTERNAL REVENUE

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Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, affirming the summary judgment granted in favor of respondent Commissioner of Internal Revenue (hereinafter referred to as "Commissioner") and against Petitioners.

Barring this, Petitioners request this Court to remand their case to the United States Court of Appeals for the Ninth Circuit, with specific instructions to hear and consider Petitioners arguments and proof of mathematical and historical error as provided by statute at 5 U.S.C. § 702 and 5 U.S.C. § 706.

The summary judgment granted by the Tax Court, and later affirmed by the Ninth Circuit was made without each respective court ever hearing or considering the proof of the Petitioners that Julliard v. Greenman, 110 U.S. 421, 4 S. Ct. 122, 28 L. Ed. 204 (1884), is historically wrong.

## OPINIONS BELOW

The slip opinion of the United States Court of Appeals for the Ninth Circuit has not been reported in an official or unofficial report; the slip opinion appears as Appendix A. The memorandum opinion of the United States Tax Court is published in slip opinion form and is not officially or unofficially reported; it appears as Appendix B to this petition.

## JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered and filed on the 13th day of April, 1982. The jurisdiction of this Court is invoked under 28 USC § 1254(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

Article I, Section 8, Clause 5:

> "The Congress shall have Power . . .
>
> "To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures."

Article I, Section 10, Paragraph 1:

> "Limitations upon powers of states. No State shall enter into any Treaty, Alliance, or Confederation; grant letters of Marque and reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

Article I, Section 10, Paragraph 2:

> "No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its

inspection laws: and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

Amendment IX:

"Rights retained by people. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

## STATUTES INVOLVED

31 USC § 314:

"Standard unit of value.

"The dollar of gold 9-10ths fine consisting of the weight determined under the provisions of Section 821 of this title shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity."

## STATEMENT OF THE CASE

Petitioners duly filed their joint income tax returns with the Commissioner for the tax years ended December 31, 1977, and December 31, 1978.

Petitioners completely and correctly filled out their returns; prepared in accordance with the standard unit of monetary value of the United States -- the intrinsic value specie coin unit of the monetary system of the United States -- asIspecified and defined from the Constitution and applicable statutes (Coinage Acts of 1792, 1849, 1873, 1878, 1900 and 31 U.S.C. § 314), conforming to the intent of the legislators, which intent constitutes the law (Steward v. Kahn, 78 U.S. 504),

and avoiding the errors of fact upon which the Legal Tender and Gold Clause cases are based.

The Commissioner, neglecting and relying upon the errors in the Legal Tender Cases (Knox v. Lee, Parker v. Davis, 79 U.S. (12 Wall.) 457, 20 L. Ed. 287 (1870), and in Julliard v. Greenman, 110 U.S. 421, 4 S. Ct. 122, 28 L. Ed. 204 (1884), mailed a notice of deficiency for 1977 and 1978 on March 18, 1981. Based upon the error of fact in Knox v. Lee, supra, and Julliard v. Greenman, supra, Commissioner determined a deficiency of 9864.00 non-intrinsic value paper for tax year ended December 31, 1977, and a deficiency of 8989.00 non-intrinsic value paper for tax year ended December 31, 1978, which non-intrinsic value the government admits, and which non-intrinsic sub-

stance (i.e. having no inherent worth) this Court has denied may be used as money (Knox v. Lee, supra, p. 553). Petitioners disputed the full amounts of each deficiency, computed by the Commissioner in terms of non-intrinsic value paper based upon error of fact in Knox v. Lee, supra, and Julliard v. Greenman, supra, and the fact the amounts determined were not in the standard unit of value per 31 U.S.C. § 314.

Petitioners filed their petition in the United States Tax Court on April 14, 1981, challenging the Commissioner's reliance upon: 1) provable mathematical error, 2) provable historical error, and 3) the historically wrong Julliard v. Greenman, supra. The Commissioner filed his answer on May 21, 1981.

On July 2, 1981, Commissioner filed a motion for summary judgment and damages, resisted by petitioners in defense of their constitutional rights and right against error of fact. Petitioners resisted, citing the law preventing the granting of a summary judgment where a genuine dispute regarding a material fact exists. Petitioners introduced evidence in opposition to the summary judgment by way of affidavits and exhibits attached to their memorandum of law. The Tax Court erroneously granted Commissioner summary judgment and damages against Petitioners without considering their arguments or proof of historical error.

The Commissioner, the Tax Court, and the Ninth Circuit all acted upon the erroneous assumption that Petitioners somehow sought to limit

their income to amounts received in gold and silver coin, or intended to raise an issue which had already been decided by the courts of the land, such as a challenge to the Federal Reserve System or to the legal tender laws. In fact, Petitioners merely contend that all income and expense items on their income tax returns, in whatever form received, should be reported in terms of specie dollars as defined out of the Constitution, and which by statute are defined as a certain weight of 0.900 fine gold (31 U.S.C. § 314, Act of March 14, 1900, Ch. 41), and which likewise by statute (31 U.S.C. § 314) are the standard monetary unit of the United States. The Petitioners were never given any chance to explain their arguments or have them heard.

At no time did the Commissioner contest any of the factual evidence presented by Petitioners nor has he challenged the Petitioners' formula for conversion; the Commissioner presented no counter-affidavits. Despite this state of the record, the Tax Court rendered summary judgment in favor of the Commissioner (Pet. App. B) and the Ninth Circuit affirmed (Pet. App. A).

The jurisdiction of the Tax Court was premised upon 26 U.S.C. § 7442, the jurisdiction of the United States Court of Appeals of the Ninth Circuit rested upon 26 U.S.C. § 7482, and the jurisdiction of this court is founded upon 26 U.S.C. § 7482 and 28 U.S.C. § 1254(1).

## REASONS FOR GRANTING THE WRIT

The United States Court of Appeals for the Ninth Circuit has failed to hear the arguments and proof of Petitioners. Petitioners proof has never been examined by the Ninth Circuit -- nor any other circuit -- nor has the Ninth Circuit, or any other court, been able to disprove the mathematical and historical proof presented by Petitioners. In addition, the Ninth Circuit has used rules of appellate procedure to discourage Petitioners from securing their consitutional rights.

I. Abrogation of Coinage and Monetary Rights Secured by the Constitution.

It is a well-settled rule of law, most recently re-affirmed by the Supreme Court in Miranda v. Arizona 384 U.S. 436, 491, 86 S. Ct. 1602, 1636 (1966), that, "Where rights secured by Constitution are involved, there can be no rule-making or legislation which would abrogate them." This is a correct re-affirmation, and in essence is a judicial re-statement of the supreme law of the land reflected in the Ninth Amendment.

Petitioners, as sovereign individuals, have certain constitutional coinage and monetary rights, which are guaranteed by that document and may not be contravened. No rule-making, statutes, or other decisions may abrogate a

constitutional right, Miranda v. Arizona, supra. Among these rights are the right to have Congress -- and no one else -- coin money (not just issue a medium of exchange) and regulate its value; the right to have that money secured against counterfeiting, including debasement (U.S. Const. Amend. IX); the right to have the States only use gold and silver coin as a tender in payment of debt; the right to have the federal government subjected to this same gold and silver as it is required to be in U.S. Const. Art. 1, § 10, ¶ 2; the right to circulating dollar coin of gold and silver; and the right under the Ninth Amendment not to have any of these money rights denied or disparaged.

The coinage and monetary rights of Petitioners have been, and are being, denied by the Commissioner

through his basing extra tax due in paper (which he cannot distinguish from a perfect counterfeit) through his failure to use the standard unit of value as defined by statute (31 U. S. C. § 314), and through his reliance upon the errors in the Legal Tender Cases, Knox v. Lee, supra, and Julliard v. Greenman, supra.

In Julliard v. Greenman, supra, the court said at p. 449, "So, under the power to coin money and regulate its value, Congress may (as it did with regard to gold by the Act of June 28, 1834, Ch. 95, and with regard to silver by the Act of February 28, 1878, Ch. 20) issue coins of the same denomination as those already current by law, but of less intrinsic value than those, by reason of containing a less weight of the precious metals, and

thereby enable debtors to discharge their debts by the payment of coins of less real value."

In relation to this statement the court, besides sanctioning the violation of contract, offered its opinion that circulating paper could be issued as money, even though it possesses no intrinsic value, or value of and by itself, and is completely contrary to what the court said in Knox v. Lee, supra: that which has no intrinsic value may not be used as money. Neither the Commissioner nor the courts may construe that a piece of paper (which has no intrinsic value) is a dollar, when the dollar is defined otherwise by statute (March 14, 1900, ch. 41) and may be shown historically and presently to be something other than what the defendant seems to think it is. To construe that

a piece of paper is a dollar, and to base extra tax upon Petitioners as a result of so construing, is a blantant denial and disparagement of their rights, prohibited under the Ninth Amendment.

II. Reliance Upon Factual Error: Julliard v. Greenman, supra, Is Historically Wrong.

The Facts Show There Was no Change in the 412 1/2 Grain Dollar Weight of the Act of January 18, 1837, Ch. 3, and the 412 1/2 Grain Dollar Weight of the Act of February 28, 1878, Ch. 20, It Is Error To Say or Imply There Was.

A careful review and critique of Knox v. Lee, supra, and Julliard v. Greenman, supra, reveals substantial errors of mathematical and historical fact which do not withstand the tests of mathematical analysis and historical proof.

In Julliard v. Greenman, supra, at p. 449, Congress, contrary to what the court said, did not issue money of less intrinsic value. An examination of the statutes to which reference is made, and simple mathematics, proves this.

The Act of February 28, 1878, ch. 20, § 1 says, "That there shall be coined, at the several mints of the United States, silver dollars of the weight of four hundred and twelve and a half grains Troy of standard silver, as provided in the act of January eighteenth, eighteen hundred thirty-seven * * *."

Is a silver dollar of 412 1/2 grains Troy of standard silver money under this Act of less intrinsic value than that provided by the Act of January 18, 1837?

This answer is found in § 9 of the Act of January 18, 1837, to-wit: "And be it further enacted, That of the silver coins, the dollar shall be of the weight of four hundred and twelve and one-half grains; * * *."

Clearly, then, the 412 1/2 grain weight of the silver dollar of the Act of 1878 is equal to the 412 1/2 grain weight of the silver dollar of the Act of 1837, and money of less intrinsic value was not issued by Congress.

The Commissioner, and the Court, must agree that 412 1/2 grains of standard silver equals 412 1/2 grains of standard silver. Therefore, the Commissioner's basis for calculating additional tax using money of less intrinsic value is disproven.

Nor did Congress issue gold money of less intrinsic value by the Act

of June 28, 1834, ch. 95, as the court asserts. This has been recognized by previous legal treatise [Paul Bakewell, attorney, WHAT ARE WE USING FOR MONEY? (New York: Van Nostrand, 1952, ch. 2, ch. 6)]. An examination of this Act of 1834 and the facts will prove there was no money issued of less intrinsic value.

Prior to the Act of 1834, the gold eagle ($10.00) had a weight of 270 grains and was 0.9167 fine. Since it was worth ten dollars, it contained 1000 cents, giving each grain a value of 1000/270 = 3.70 cents per grain. When the Act of June 28, 1834 took effect on August 1, 1834, this money was given a higher value by law. Section 3 of the Act specified, "That all gold coins of the United States, minted anterior to (i.e. before) the thirty-first of July next, shall be receivable in all payments

at the rate of ninety-four and eight-tenths of a cent per pennyweight."

Since there are 24 grains in one pennyweight, this means this money was legally given a value of 94.8 cents per 24 grains, or 94.8/24 = 3.95 cents per grain. This is clearly of more value than it had before the Act took effect -- not less -- for 3.95 is more than 3.70.

The new gold eagle which Congress issued under this Act had 1000 cents, while the previous eagle now had a legal value of 3.95 cents/gr. x 270 gr. = 1066.5 cents. The new eagle had a weight of 258 grains, which gives it a value of 1000/258 = 3.88 cents per grain. So, the old eagle, which contained more precious metal than the new, since it was 0.9167 fine, had a higher value than the new eagle which was only 0.900 fine.

Clearly, then, there was an increase in intrinsic value, contrary to what the court says, not a decrease in intrinsic value, for even the new eagle at 3.88 cents per grain had more value than the old at 3.70 cents per grain. The new money had a less weight than the old money, but there was no change or decrease in intrinsic value (which is where the value of money exists), for if we calculate the value per grain of the old eagle (X) supposing it to be only 0.900 fine, we find:

$$\frac{X}{0.9} = \frac{3.95}{0.9167},$$

solving: $X = 3.95 \frac{(0.900)}{(0.9167)} =$

$3.95\ (0.9817) =$

3.88 cents grain.

This is exactly the value of the new money, and again the Commissioner, and

Court, must agree that 3.88 cents per grain equals 3.88 cents per grain. Therefore, Commissioner's basis for calculating additional tax using money of less intrinsic value is again firmly disproved.

III. This Court Has Held Against Making As Money That Which Has No Intrinsic Value; The Ninth Circuit Erred in not Holding to the Dictates of This Court.

The majority in The Legal Tender Cases, supra, 12 Wall. at 553, held:

> "... It is, then, a mistake to regard the Legal Tender Acts as ... making that money which has no intrinsic value."

The Commissioner concedes that paper currency currently circulating, and in which he made his determinations, possesses no intrinsic worth: On June 3, 1974, Mr. Henry C. Stockell, Jr.,

acting general counsel, United States Department of the Treasury, wrote the Petitioners:

> "In your letter of May 27, you ask whether the paper money currently in circulation in this country has an intrinsic value.
>
> "No paper money -- whether in this country or elsewhere -- has intrinsic worth. ..."

IV. The Commissioner Has Failed To Use the Standard Unit of Value.

The Commissioner has failed to make his determination in the standard unit of value. 31 U.S.C. § 314 states: "The dollar of gold nine-tenths fine * * * shall be the standard unit of value, * * *." The Commissioner has not made his determinations in the standard unit of value, in the manner by which that unit is defined by statute. His claim is thus defective and invalid.

V. Denial of Historical Fact.

The Commissioner denies that Congress adopted the dollar as the money unit of the United States. This is refuted by an examination of the record. On Wednesday, July 6, 1785, Congress assembled. On the question, "That the money unit of the United States of America be one dollar," every member answered "ay." "So it was resolved in the affirmative as follows

> "Resolved That the money unit of the United States of America be one dollar."

The handwritten record of this vote and resolution is available for visual presentation to the court.

VI. Summary Judgment to Avoid a Decision; Award of Damages to Deny Constitutional Rights.

The Tax Court makes use of summary judgment in a spurious manner

to avoid facing the mathematical and historical proof of error. The court must either face the proof as presented and acknowledge its correctness, or show completely and convincingly where the proof is in error. By avoiding this through the maneuver of summary judgment, or the charge of "frivolous," the court calls its competence into question, and by default concedes that the proof is correct.

By any standard, the Commissioner makes a computational error in his re-calculation of Petitioners' taxes for 1977 and 1978. This point alone should not have been ignored by the Tax Court. The Commissioner is also known for his over-collection of taxes supposed due by drawing on letter of credit. Exercising techniques as this, he should not be allowed the additional plum of "damages"

when valid, serious constitutional issues are presented.

## CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Barring this, the case should be remanded to the Ninth Circuit, with specific instructions to hear and consider the arguments and proof of mathematical and historical error.

Respectfully submitted,

GORDON B. LEITCH, JR.
MARY C. LEITCH

By: _____
GORDON B. LEITCH, JR.

By: _____
MARY C. LEITCH

PETITIONERS PRO SE